

STATE OF MICHIGAN
COURT OF APPEALS

DOUGLAS VORIS,

Plaintiff-Appellee,

v

DEPARTMENT OF HUMAN SERVICES,

Defendant-Appellant.

UNPUBLISHED

April 19, 2007

No. 273255

Shiawassee Circuit Court

LC No. 06-003668-DP

Before: Saad, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted the trial court's order denying its motion for summary disposition in this suit to establish paternity. We reverse.

I. Basic Facts and Procedural History

In June 2005, the Shiawassee Circuit Court terminated the parental rights of Heather and Justin Cooper to Corbyn Michael Douglas Voris. Although Heather was married to Justin at the time of Corbyn's conception and birth, plaintiff sought to intervene in the termination proceedings, claiming to be the child's biological father. The court, however, determined that plaintiff lacked standing to assert rights as a putative father because Corbyn had a legal father, i.e., Justin, at the time of those proceedings.

Thereafter, Justin filed for divorce from Heather in the Wexford Circuit Court. At the conclusion of those proceedings, the Wexford Circuit Court entered a judgment of divorce in which it found plaintiff in this case to be "the biological and legal father" of Corbyn. Relying on this determination, plaintiff filed the instant paternity action in the Shiawassee Circuit Court. Defendant immediately moved for summary disposition on the ground that plaintiff lacked standing to bring suit under the Paternity Act, MCL 722.711 *et seq.* Defendant argued, among other things, that the Wexford Circuit Court lacked authority to determine Corbyn's paternity in the divorce action given that the parties' parental rights to the child had been previously terminated. The trial court disagreed and, relying on the judgment of divorce to establish plaintiff's standing, denied defendant's motion. This Court subsequently granted defendant's delayed application for leave to appeal the trial court's decision in that regard.

II. Analysis

At issue in this case is whether plaintiff has standing as a putative father to establish his paternity of Corbyn following the termination of the parental rights of Corbyn's biological mother and legal father. Whether a party has standing to bring an action is a question of law that we review de novo. *In re KH*, 469 Mich 621, 627-628; 677 NW2d 800 (2004).

"Standing to pursue relief under the Paternity Act . . . is conferred on the mother or father of a child born out of wedlock, or on the [the Department of Human Services] in limited circumstances." *Id.* at 631-632. Pursuant to MCL 722.711(a), a child born out of wedlock is one who was either "begotten and born to a woman who was not married from the conception to the date of the birth of the child, *or a child that the court has determined to be a child born or conceived during a marriage but not the issue of that marriage.*" (Emphasis added).

In this case, it is not disputed that the child in question was born during an intact marriage. Thus, plaintiff has no standing to establish paternity "'without a prior determination that the mother's husband is not the father.'" *In re KH*, *supra* at 632, quoting *Girard v Wagenmaker*, 437 Mich 231, 235; 470 NW2d 372 (1991); see also MCL 722.711(a). The trial court found the judgment of divorce sufficient to satisfy the requirement of a "prior determination" and thus afford plaintiff standing. Under the facts of this case, however, we do not agree that the judgment of divorce affords plaintiff standing. As a general matter, a trial court has jurisdiction to determine matters of child custody and support arising during divorce proceedings. MCL 552.17a. Thus, where a dispute concerning parentage arises during the course of such proceedings, a determination as to parentage of children born during the marriage is both necessary and permissible. Indeed, as recognized by the Court in *In re KH*, "paternity claims generally arise during divorce or custody disputes, and the Legislature contemplated 'situations where a court in a prior divorce or support proceeding determined that the legal husband of the mother was not the biological father of the child.'" *Id.* at 635, quoting *Girard*, *supra* at 246. Here, however, the parental rights of the mother and legal father, including the right of custody and concomitant obligation and right of support, were terminated before the divorce proceedings at issue were begun. See *Fritts v Krugh*, 354 Mich 97, 109; 92 NW2d 604 (1958), overruled on other grounds by *In re Hatcher*, 443 Mich 426; 505 NW2d 834 (1993); see also MCL 722.2. Thus, as argued by defendant, there was no reason for the Wexford Circuit Court to determine parentage in the divorce proceeding. To the contrary, parentage had already been determined by the Shiawassee Circuit Court, which had decreed Justin Cooper to be the legal father of the child at issue in its order terminating parental rights. Defendant's failure to seek appeal from that order precluded what amounts to a collateral attack on the merits of that decision via the Wexford Circuit Court divorce proceedings and the instant suit for paternity. See, e.g., *People v Howard*, 212 Mich App 366, 369; 538 NW2d 44 (1995) (a collateral attack occurs whenever a challenge is made to a judgment in any manner other than through a direct appeal). Accordingly, we conclude that plaintiff is without standing to pursue this suit for paternity and reverse the trial court's order denying defendant's motion for summary disposition.

Reversed.

/s/ Henry William Saad
/s/ Joel P. Hoekstra
/s/ Michael R. Smolenski